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No. 417

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES DEPARTMENT OF AGRICULTURE, EMERGENCY CROP AND FEED LOANS, PETITIONER

v.

GEORGE G. REMUND, AS ADMINISTRATOR OF THE ESTATE OF WILHELM BUTTKE, DECEASED

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Supreme Court of the State of South Dakota (R. 21–30) is reported at 23 N. W. 2d 281. The Circuit Court of the Fifth Judicial Circuit of South Dakota and the County Court of Roberts County, South Dakota, wrote no opinions.

JURISDICTION

The judgment of the Supreme Court of South Dakota was entered on May 20, 1946 (R. 30–31).

The petition for writ of certiorari was filed on August 19, 1946, and granted on October 28, 1946 (R. 35). The jurisdiction of this Court rests upon Section 237 (b) of the Judicial Code, as amended by the Act of February 15, 1925.

QUESTION PRESENTED

Whether, in a state probate proceeding, a claim asserted by the Farm Credit Administration and certain of its officials for and on behalf of the United States is entitled to priority under Section 3466 of the Revised Statutes.

STATUTES INVOLVED

The relevant portions of the statutes involved are set forth in the Appendix, pp. 31–35.

STATEMENT

Section 3466 of the Revised Statutes (Appendix, p. 31), in so far as here relevant, provides that "* * * whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied * * *."

The facts are undisputed and may be summarized as follows:

Pursuant to the Acts of February 23, 1934, and June 19, 1934 (Appendix, pp. 31–34), the Governor of the Farm Credit Administration extended loans to Wilhelm Buttke totalling $370.00 (R.

5–8).[1] The major portion of these loans remained unpaid, and on December 26, 1941, Buttke died intestate, leaving an estate insufficient to pay all of his debts (R. 9). On March 2, 1942, the Governor of the Farm Credit Administration filed in the County Court of Roberts County, South Dakota, a claim against Buttke's estate for $523.80, the amount of the unpaid indebtedness including interest. This claim was made "for and on behalf of the United States of America" (R. 1–4), and a priority therefor on behalf of the United States was asserted under R. S. 3466 (R. 1–2).[2]

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[1] Eighty dollars of this amount was evidenced by a 5½% interest-bearing note, payable on or before August 13, 1935, and bearing on its face the printed notations: "This instrument given to the Governor, Farm Credit Administration acting pursuant to the act of Congress approved February 23, 1934"; and "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration, which loan is secured by a lien instrument covering personal property" (R. 5). The remaining $290.00 loaned to Buttke was evidenced by six 5½% interest-bearing notes, payable on or before November 1, 1935, each note bearing on its face the printed notations: "This instrument given to the Governor, Farm Credit Administration, acting pursuant to the act of Congress approved June 19, 1934," and "This note is given as evidence of a loan made by the Governor of the Farm Credit Administration" (R. 5–8).

[2] The claim was filed by "John T. Ashford, Manager, Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska, an authorized agent for the Governor, Farm Credit Administration, for and on behalf of the United States of America" (R. 1–4). Accompanying the claim was a mimeographed memorandum

On October 31, 1942, the County Court denied preference to the claim, but allowed it in the sum of $79.53, representing the pro rata share of a claim of a common creditor (R. 12–16). On appeal, this decision was affirmed by the Circuit Court of the Fifth Judicial Circuit of South Dakota (R. 18–19) and by the Supreme Court of South Dakota (R. 21–30). The Supreme Court, while not specifically deciding whether the claim in question was or was not a claim of the United States, stated that since the claim was not filed in the name of the United States, it could be treated as a claim of the United States "only by inference, explanation and argument" (R. 23). It then held, relying on *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, which it regarded as controlling, that an exception to R. S. 3466 was created by the Acts of February 23, 1934, and June 19, 1934, and accordingly refused to allow the claimed priority.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of South Dakota erred:

1. In holding in substance that a claim filed in the name of the Farm Credit Administration or

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from the Farm Credit Administration, Emergency Crop and Feed Loan Office, Omaha, Nebraska, asserting priority on behalf of the United States under R. S. 3466; this memorandum was addressed to "All Receivers, Referees, Executors, Administrators, Assignees, and Courts Dealing with Insolvent, Bankrupt, or Deceased Borrowers of the Emergency Crop and Feed Loan Office, Farm Credit Administration, Omaha, Nebraska" (R. 1–2).

its officers "for and on behalf of the United States" is not a claim filed by the United States.

2. In holding that the Farm Credit Administration is an entity separate and distinct from the United States, having independent power to sue.

3. In holding that claims of the Farm Credit Administration based upon loans made under the Acts of February 23, 1934, and June 19, 1934, are not "debts due to the United States" within the meaning of R. S. 3466.

4. In holding that claims of the Farm Credit Administration based upon loans under the Acts of February 23, 1934, and June 19, 1934, are not entitled to priority under R. S. 3466.

5. In denying priority to claims of the United States.

6. In affirming the judgment of the Circuit Court of the Fifth Judicial Circuit of South Dakota.

SUMMARY OF ARGUMENT

I

The claim here involved, filed in the name of the Governor of the Farm Credit Administration for and on behalf of the United States on loans made pursuant to the Act of February 23, 1934 and June 19, 1934, is for a debt due to the United States. As its evolution clearly demonstrates, the Farm Credit Administration (unlike the government corporation involved in *Sloan Shipyards Corp.* v. *United States Fleet Corp.*, 258 U. S. 549) has no identity separate from the Government, and is

merely an administrative unit similar to any regular department or other noncorporate establishment of the United States. Moreover, since the monies which the Farm Credit Administration used to make loans to farmers pursuant to these Acts were appropriated by Congress out of the United States Treasury, and when collected are repaid into the Treasury, these monies are those of the United States and the debts are due it. The fact that these activities were conducted by an agent of the United States under a name other than the United States is immaterial.

Nothing either in R. S. 3466 or in the long line of cases involving that statute supports the requirement impliedly imposed by the court below that the claim must be filed in the name of the United States. The sole condition of the priority established in the statute—that the debt be due to the United States—is here satisfied. Although the claim was filed in the name of the Governor, Farm Credit Administration, he was at most only a nominal claimant and an agent of the Government, asserting the claim on behalf of the United States. In any case, respondent was not prejudiced by the fact that the claim was filed in the name of the Governor, which variation is only a formal matter and, since not raised below, is no longer open to challenge.

II

The decision of the court below should be examined in light of the settled law that R. S.

3466 is to be liberally construed, and that exceptions to its clear language are not to be found in the absence of express statutory language or of the plainest inconsistency with the avowed purpose of the particular statute. Relying on *United States* v. *Guaranty Trust Co.*, 280 U. S. 478, the court below found an inconsistency between the purposes of the Acts here involved and R. S. 3466, in that the Government's priority might handicap the farmer in securing credit with the local bankers and investors. Such inconsistency does not in fact exist here. It is clear both from the express language of the Acts here involved and their legislative history that these statutes were intended simply to lend aid and assistance to farmers who were suffering from repeated crop failures and adverse economic conditions and who had no money and no means of obtaining credit in order to keep their farms in operation. These statutes were only two of various similar statutes passed during the depression period to provide relief for farmers. Although the creation of Production Credit Associations by the Farm Credit Act of 1933 made credit available to farmers who were more or less sound financial risks, emergency feed and crop loans secured generally by only first liens on crops growing or to be grown were continued for farmers who could not qualify for loans from these Associations, thereby emphasizing the emergency relief nature of these loans.

Moreover, even if the purpose of these Acts had been to restore the farmers' credit, the *Guaranty Trust* case is nevertheless not controlling. Under the more recent decisions of this Court such purpose would appear not to be so plainly inconsistent with R. S. 3466 as to warrant the implication that Congress had intended to relinquish the priority. This Court expressly so held in *United States* v. *Emory*, 314 U. S. 423. In addition, the *Emory* case, together with *United States* v. *Waddill Co.*, 323 U. S. 353, and *Illinois ex rel. Gordon* v. *United States*, No. 749, October Term, 1945, decided April 22, 1946, makes it clear that the *Guaranty Trust* case is simply an isolated exception carved out of R. S. 3466 because of the unique character of its lending statute. These recent decisions demonstrate that R. S. 3466 is to be applied in its full vigor, and that before an exception will be implied, the language or legislative history of the pertinent Act must affirmatively and plainly show that the priority of the United States was intended to be waived. No such showing has been, or can be, made here.

Finally, the Farm Credit Administration and the Department of Agriculture have consistently asserted successfully that these claims are entitled to priority; and the Department of Justice in litigation has likewise taken that position in connection with loans referred to it for collection. It also appears that Congress was aware of this uniform practice, and although it has enacted leg-

islation permitting the Secretary of Agriculture to compromise such debts, it has not waived priority. Such long-continued practice, acquiesced in by Congress, should prevail.

ARGUMENT

I

A CLAIM FILED IN THE NAME OF THE GOVERNOR OF THE FARM CREDIT ADMINISTRATION FOR AND ON BEHALF OF THE UNITED STATES ON LOANS MADE PURSUANT TO ACTS OF FEBRUARY 23, 1934, AND JUNE 19, 1934, IS FOR A DEBT DUE TO THE UNITED STATES

The Supreme Court of South Dakota, in denying priority to the claim here involved, did not explicitly hold that it was not a debt "due to the United States." The court's statement that this claim can be treated "as a claim filed by the United States only by inference, explanation and argument" (R. 23) does not necessarily deny that the debt is one due the United States, but

[3] The court also took judicial notice of the fact "that many claims of this character have actually been sued in the courts, exemplifying that the plaintiff at least would interpret the act as giving authority for the plaintiff to sue" (R. 24). Although the caption in the court below was the same as it is here, we presume that the court below was referring either to the Farm Credit Administration or to its Governor, and not to the Department of Agriculture. The court below also discussed, as if applicable, the *Sloan Shipyards* case (R. 25–26) and *Federal Housing Administrator v. Moore*, 90 F. 2d 32 (C. C. A. 9) (R. 29–30), which cases have no significance here except in relation to the question of whether the claim here asserted was a debt due the United States.

may merely be an attempt to tack to the assertion of priority under R. S. 3466 a wholly unwarranted formal requirement. Respondent, however, squarely contends that the claim here involved is not a debt to the United States. Neither the statutes involved nor the controlling decisions lend any support to the Court's intimations and respondent's ~~and respondent's~~ contentions in this respect.

A. THE CLAIM HERE INVOLVED IS A DEBT DUE TO THE UNITED STATES

Respondent argues (Br. in Opp., pp. 4–5) that since the claim here involved is based on seven notes executed by the deceased to "the Governor of the Farm Credit Administration, or order, at Washington, D. C." (R. 5, 6), and that since the notes stated that they were "given as evidence of a loan made by the Governor of the Farm Credit Administration," they are obligations due to the Governor of the Farm Credit Administration and not to the United States.[*] The premise of this argument is that the Farm Credit Administration, like the government corporation in *Sloan Shipyards Corp.* v. *United States Fleet Corp.*, 258 U. S. 549, is an entity, separate and distinct from the United States, and hence obligations due it are not entitled to priority under R. S. 3466.

[*] We do not understand respondent to contend, nor could such a contention reasonably be made, that the "Governor" is an entity distinct from the Farm Credit Administration.

The *Sloan Shipyards* case, whatever its present vitality, is restricted to the situation where the preference is in fact being claimed for a debt due, not to the United States or any department or agency thereof, but to a government corporation constituting a distinct legal entity and having an identity separate from that of the United States. *United States* v. *Marxen*, 307 U. S. 200, 203, 206; *In re Wilson*, 23 F. Supp. 236, 238 (N. D. Texas). Nothing is shown by respondent, or by the court below, which indicates that the Farm Credit Administration is in any material respect different from a regular department or other noncorporate establishment of the United States. *North Dakota-Montana Wheat Growers' Ass'n.* v. *United States*, 66 F. 2d 573 (C. C. A. 8); *In re Wilson, supra; Federal Reserve Bank of Dallas* v. *Smylie*, 134 S. W. 2d 838 (Tex. Civ. App.).

That the Farm Credit Administration "is merely an administrative body of the * * * Government" (*United States* v. *Fontenot*, 33 F. Supp. 629, 630 (W. D. La.); cf. *Korman* v. *Federal Housing Administrator*, 113 F. 2d 743 (App. D. C.)) is clear. It was created originally in 1933 as an independent agency to take over the functions of the Federal Farm Board[5] and the Federal Farm Loan Board. Executive Order No. 6084. In 1939, it was subordinated to the Depart-

[5] See *Federal Reserve Bank of Dallas* v. *Smylie*, 134 S. W. 2d 838, 840–841 (Tex. Civ. App.), for a history of the Federal Farm Board.

ment of Agriculture to be administered in that department under the general supervision and direction of the Secretary of Agriculture (Reorganization Plan No. 1, Sec. 401 (a), 53 Stat. 1429, 4 Fed. Reg. 2730), and in 1942, as the consequence of consolidation within the Department of Agriculture, the Farm Credit Administration was made a part of the Food Production Administration. Executive Order No. 9280, 7 Fed. Reg. 10179. Plainly, then, the Farm Credit Administration is an unincorporated agency of the Government presently operating within the Department of Agriculture, established to carry out functions delegated to it for administration, has no identity separate from the Government, and its contracts and undertakings are those of the United States. *Herren* v. *Farm Security Administration,* 153 F. 2d 76 (C. C. A. 8); *North Dakota-Montana Wheat Growers' Ass'n.* v. *United States,* 66 F. 2d 573 (C. C. A. 8); *United States* v. *Fontenot, supra; In re Wilson,* 23 F. Supp. 236 (N. D. Texas); *Federal Reserve Bank of Dallas* v. *Smylie,* 134 S. W. 2d 838 (Tex. Civ. App.); cf. *Korman* v. *Federal Housing Administrator, supra.*

Moreover, the Farm Credit Administration "has no legal entity but exists as an agency of the United States Government to administer and disburse the funds appropriated by Congress out of the United States Treasury. Money thus distributed or loaned to farmers, when repaid by, or collected

from, them necessarily is paid back into the Treasury of the United States from whence it was taken." *Federal Reserve Bank of Dallas* v. *Smylie,* 134 S. W. 2d 838, 841 (Tex. Civ. App.). In other words, "the Governor of the Farm Credit Administration was merely an agent, or, intermediary through which the money passed from the treasury to the citizen. That those agents were given names other than the United States does not alter the fact that actually and in truth it was the money of the United States in each instance, and the debts are due the United States." *In re Wilson, supra,* at 238; cf. *Herren* v. *Farm Security Administration, supra,* pp. 77–78; *In re Hansen Bakeries, Inc.,* 103 F. 2d 665, 666 (C. C. A. 3). The fact that the monies which have been loaned and which are the basis for the claim for repayment and preference have been appropriated by Congress out of the Treasury of the United States for the purpose of such loans has frequently been regarded as controlling. *Wagner* v. *McDonald,* 96 F. 2d 273 (C. C. A. 8); *Barnett* v. *American Surety Co.,* 77 F. 2d 225 (C. C. A. 10); *In re T. N. Wilson, Inc.;* 24 F. Supp. 651 (E. D. N. Y.); *In re Weil,* 39 F. Supp. 618 (M. D. Pa.); *In re Stamford Auto Supply Co.,* 25 F. Supp. 530, 531 (N. D. Tex.); cf. *United States* v. *Summerlin,* 310 U. S. 414; *United States* v. *Brock,* 5 F. 2d 265 (W. D. La.). And it may be observed that the authority of the *Sloan Shipyards* case

seems to have been seriously impaired by subsequent decisions of the Court which have recognized the identity between the claims of governmental corporations and claims of the United States.[a] Cf. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 524; *Cherry Cotton Mills* v. *United States*, 327 U. S. 536, 539. Accordingly, we sub-

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[a] As pointed out by the court below (R. 26–27), Mr. Chief Justice Taft concurred in the *Sloan Shipyards* case on the ground that he would limit the preference established by R. S. 3466 to claims of the United States for taxes. Respondent (Br. in Opp., pp. 3–5) has similarly suggested that R. S. 3466 is properly limited to the collection of taxes "imposed by the Federal Government in support of its sovereignty" in contradistinction to claims, such as those involved in the present case, arising from some business venture. But this attempted limitation on the scope of R. S. 3466 has not found acceptance. See *United States* v. *Knott*, 298 U. S. 544; *United States* v. *Emory*, 314 U. S. 423; *United States* v. *Waddill Co.*, 323 U. S. 353. Even assuming that the claim here involved had certain elements of a commercial nature and did not square exactly with the classic concept of governmental undertakings, it nevertheless was solely governmental in character. All valid acts of the United States are necessarily governmental and sovereign in character. *Graves* v. *O'Keefe*, 306 U. S. 466, 477; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21, 32. A contrary holding in respect of a Federal Housing Administration loan by the Supreme Court of Florida was summarily rejected by this Court in *United States* v. *Summerlin*, 310 U. S. 414, 416, reversing 140 Fla. 475. In addition, it is well established that the preference established by R. S. 3466 does not arise from the sovereign character of the United States but from the statute itself. *United States* v. *State Bank of North Carolina*, 6 Pet. 29; *Whan* v. *Green Star SS Corp.*, 22 F. 2d 483 (C. C. A. 2), certiorari denied *sub nom. Adams* v. *United States*, 276 U. S. 629.

mit that the claim here involved constitutes a debt due to the United States.

B. THE MANNER IN WHICH THE CLAIM WAS FILED SATISFIES THE REQUIREMENT OF THE STATUTE

Since the claim was filed in the name of the Governor of the Farm Credit Administration, the court below stated that "inference, explanation or argument" is needed to arrive at the conclusion that the claim was filed by the United States. In denying the claim priority, the court by implication imposed the additional requirement that the claim must be filed in the *name* of the United States. This is a refinement for which no support can be found.

1. Neither R. S. 3466 itself nor any of the long line of cases involving that statute supports such a requirement. As far as the statute is concerned, the sole condition of the priority there established is that the debt be due to the United States. There is no requirement that it be filed in the name of the United States nor does the statute bar from priority debts admittedly due to the United States but filed in the name of one of its noncorporate agencies. In addition, although the statute has been in force in substantially its present form since 1797 (1 Stat. 515; *Price* v. *United States*, 269 U. S. 492, 501), no other case arising thereunder has ever imposed such a requirement.[1]

[1] In *Federal Housing Administrator* v. *Moore*, 90 F. 2d 32 (C. C. A. 9), mentioned by the court below (R. 29), pri-

2. In any event, the claim itself specifically stated that it was a "claim of the United States of America" (R. 4) and that the Farm Credit Administration was acting "for and on behalf of the United States of America" and "as the agent of the United States in making and collecting loans to farmers throughout the United States" (R. 4); the memorandum attached to the claim (R. 1) asserted preference under R. S. 3466 for "debts due to the United States" and asserted that "the United States Government, acting through the Secretary of Agriculture or through the Governor of the Farm Credit Administration, has made emergency crop and feed loans to farmers. Loans of this character are now administered by the Farm Credit Administra-

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ority in bankruptcy was denied a claim of the Federal Housing Administrator, partly on the ground that the claim was not filed in the name of the United States. But it does not appear that the claim there was filed, as here, on behalf of the United States, nor that the debt upon which the claim was based was acquired by the Administrator acting for the United States. Moreover, the decision of the court turned primarily upon the fact that the debt was assigned to the Administrator after the date of adjudication. See *United States* v. *Marxen*, 307 U. S. 200; *Korman* v. *Federal Housing Administrator*, 113 F. 2d 743, 745–746 (App. D. C.); *Wagner* v. *McDonald*, 96 F. 2d 273, 276 (C. C. A. 8); *In re Dickson's Estate*, 197 Wash. 145, 153. Finally, the Circuit Court of Appeals for the Ninth Circuit itself expressly questioned the soundness of the *Moore* decision in the certificate (p. 4) filed in *United States* v. *Marxen*, No. 544, October Term, 1938.

tion * * *." Furthermore, the United States Attorney and his assistants appeared in their official capacities in the County Court of Roberts County (R. 13, 17, 18), the Circuit Court of Roberts County (R. 19, 20), and the Supreme Court of South Dakota (R. 21), to press the claim for priority. Cf. *National Home for Disabled Volunteer Soldiers* v. *Wood,* 81 F. 2d 963, 965 (C. C. A. 7), affirmed, 299 U. S. 211. In these circumstances, it was clear that the claim was being asserted by the United States in its name, and hence was entitled to priority under R. S. 3466. *Wagner* v. *McDonald,* 96 F. 2d 273 (C. C. A. 8); *In re Hansen Bakeries,* 103 F. 2d 665, 666 (C. C. A. 3); *Korman* v. *Federal Housing Administrator,* 113 F. 2d 743, 744 (App. D. C.); *In re T. N. Wilson, Inc.,* 24 F. Supp. 651 (E. D. N. Y.); *In re Stamford Auto Supply Co.,* 25 F. Supp. 530 (N. D. Texas); *In re Weil,* 39 F. Supp. 618 (W. D. Pa.); *In re Dickson's Estate,* 197 Wash. 145. Cf. *Herren* v. *Farm Security Administration,* 153 F. 2d 76 (C. C. A. 8).

Moreover, although the claim was filed in the name of the Governor of the Farm Credit Administration, he has no personal interest in the claim nor does he claim ownership of the debt in his own right; he is an agent of the United States, and his acts in so far as they are authorized are in legal effect the acts of the United States. Accordingly, he is at most only a nominal

claimant, and the court below should have looked through him to the real claimant and treated the claim as one made by the Government. *Wagner* v. *McDonald, supra,* at 276; *North Dakota-Montana Wheat Growers' Ass'n* v. *United States,* 66 F. 2d 573 (C. C. A. 8); *In re Wilson,* 23 F. Supp. 236 (N. D. Tex.); cf. *State Highway Commission of Wyoming* v. *Utah Const. Co.,* 278 U. S. 194; *E. I. Dupont de Nemours & Co.* v. *Davis,* 264 U. S. 456, 459; *Kansas* v. *United States,* 204 U. S. 331; *Herren* v. *Farm Security Administration, supra; National Home for Disabled Volunteer Soldiers* v. *Wood,* 81 F. 2d 963 (C. C. A. 7), affirmed, 299 U. S. 211; *United States* v. *Golden,* 34 F. 2d 367 (C. C. A. 10); *Schroeder* v. *Davis,* 32 F. 2d 454 (C. C. A. 8).

3. In any case, respondent was not prejudiced by the fact that the claim was filed in the name of the Governor, Farm Credit Administration, rather than in the name of the United States. Cf. *E. I. du Pont de Nemours & Co.* v. *Davis,* 264 U. S. 456, 459. Such variation is purely a formal matter which, since it has not been raised in the lower courts, is no longer open to challenge, for it is well settled under both federal and South Dakota law that after issue is joined, the raising of such a question is barred. *Fortier* v. *New Orleans National Bank,* 112 U. S. 439; *McCandless* v. *Furland,* 293 U. S. 67, 73; *National Home for Disabled Volunteer Soldiers* v. *Wood,* 81 F.

2d 963 (C. C. A. 7), affirmed, 299 U. S. 211; *W. H. Shenners Co.* v. *Lake Worth Realty & Building Co.*, 45 F. 2d 297 (C C. A. 7), certiorari denied, 283 U. S. 833; *Alderman* v. *N. Y. Underwriters' Insurance Co.*, 61 S. D. 284, 299, and cases there cited; *State ex rel. Cook* v. *Board of Commissioners*, 29 S. D. 358.

II

DEBTS DUE THE UNITED STATES ON LOANS MADE PURSUANT TO ACTS OF FEBRUARY 23, 1934, AND JUNE 19, 1934, ARE ENTITLED TO PRIORITY UNDER R. S. 3466

This Court has repeatedly and consistently held that R. S. 3466 is a statute enacted to secure adequate public revenues to sustain the public burden* and is to be liberally construed to effectuate its purpose. *United States* v. *Fisher*, 2 Cranch 358; *Harrison* v. *Sterry*, 5 Cranch 289, 298–299; *United States* v. *State Bank of North Carolina*, 6 Pet. 29, 35; *Beaston* v. *Farmers' Bank*, 12 Pet. 102, 134; *Bramwell* v. *United States Fidelity and Guaranty Co.*, 269 U. S. 483, 487; *Price* v. *United States*, 269 U. S. 492, 500; *United States* v. *Marxen*, 307 U. S. 200, 206; *United States* v. *Emory*, 314 U. S. 423, 426. Moreover, the language of the statute,

* That the rule of liberal construction applies to all claims involving debts due the United States seems too clear to warrant discussion. See *United States* v. *Knott*, 298 U. S. 544; *United States* v. *Emory*, 314 U. S. 423; *United States* v. *Waddill Co.*, 323 U. S. 353; see also, *Inland Waterways* v. *Young*, 309 U. S. 517; *Cherry Cotton Mills* v. *United States*, 327 U. S. 536.

which admits of no exception, is so clear that there is but little room for construction. *Thelluson* v. *Smith,* 2 Wheat. 396; *Lewis, Trustee* v. *United States,* 92 U. S. 618, 621; *United States* v. *Emory,* 314 U. S. 423, 426; *United States* v. *Waddill Co.,* 323 U. S. 353, 355; *Illinois ex rel. Gordon* v. *United States,* No. 749, October Term, 1945, decided April 22, 1946. It is only in the presence of express language (*Mellon* v. *Michigan Trust Co.,* 271 U. S. 236) or of a basic inconsistency with the avowed purpose of a particular statute (*Cook County National Bank* v. *United States,* 107 U. S. 445; *United States* v. *Guaranty Trust Co.,* 280 U. S. 478) that this Court will conclusively presume a legislative intent to waive the priority conferred by R. S. 3466. It is in this setting, we submit, that the decision below should be examined.

Although the claim here involved is a debt due to the United States and there is no provision in the Acts of February 22 and June 19 expressly relinquishing the priority of the United States with respect to claims thereunder, the court below found an inconsistency between the purposes of these Acts and R. S. 3466 in that "knowledge of priority of Government claims certainly would have been a handicap to a farmer in using his credit with local bankers and investors" (R. 28). Because of this purported inconsistency the court below considered the present case to be "practically an exact parallel with" *United States*

v. *Guaranty Trust Co.*, 280 U. S. 478, and hence refused to apply R. S. 3466 to this debt (R. 28, 30).

The *Guaranty Trust* case involved loans made to railroads under Title II of the Transportation Act of 1920, 41 Stat. 456, 457–469. That Act was designed to promote the stability of the railroads for the national benefit by providing for government financing of the carriers to a certain extent until their credit was restored. Since the loans were for the purpose of stabilizing the railroads, this Court there refused to apply R. S. 3466 on the ground that priority in respect of such loans would impair, rather than improve, the credit of the railroads, and thus according these loans priority would defeat the purpose of the legislation (280 U. S. at 485).

We submit that the purpose of the Acts here involved was not to restore the credit of the farmers; that there is no such inconsistency here, as in the *Guaranty Trust* case, between the purposes of these Acts and R. S. 3466, as to require a denial of priority to debts arising thereunder; and, further, that even if there were such an inconsistency, the *Guaranty Trust* case is nevertheless not controlling.

A. THE PURPOSE OF THE ACTS OF FEBRUARY 23 AND JUNE 19 WAS NOT TO RESTORE THE CREDIT OF THE FARMERS, AND HENCE IS NOT INCONSISTENT WITH R. S. 3466

The finding of the court below that debts owed to the United States on loans made pursuant to

the Acts of February 23, 1934, and June 19, 1934, are not entitled to priority is based on the *Guaranty Trust* case, which it regarded as controlling. But the purpose of the statutes here involved, unlike the Transportation Act involved in the *Guaranty Trust* case, was not to restore the credit of the farmers, but rather to provide emergency relief to distressed farmers for the short period that they were unable elsewhere to obtain credit. This is obvious not only from the express language of these Acts, but from their legislative history as well.

The Acts of February 23, 1934, and of June 19, 1934, were only two in a series of emergency seed and crop loan statutes, the primary objective of which was to provide "for relief of farmers in the drought and/or storm stricken areas * * *" (46 Stat. 1032, 48 Stat. 354; cf. 45 Stat. 1365; 46 Stat. 78), and generally required as security only a first lien on all crops growing or to be grown.[9] Of these statutes, the first was passed in 1921 (41 Stat. 1347) and similar statutes were enacted during that depression. 42 Stat. 467; 43 Stat. 110; 44 Stat., Part II, 1245,

[9] In the *Guaranty Trust* case, this Court relied, as an additional ground for not applying R. S. 3466, on the fact that the Transportation Act provided other means of securing repayment of the Government's advances (280 U. S. at 485). That ground is inapposite here, since, in the light of the economic conditions then prevailing and the repeated crop failures, a first lien on crops growing or to be grown was clearly of dubious value.

1251. The large majority of statutes with accompanying appropriations were enacted from 1929 to 1935, during the depression period when farmers were suffering from repeated crop failures and adverse economic conditions. 45 Stat. 1306, as amended by 46 Stat. 3; 46 Stat. 78, as amended by 46 Stat. 254; 46 Stat. 1032, as amended by 46 Stat. 1160; 46 Stat. 1276; 47 Stat. 5; 47 Stat. 795; 48 Stat. 1056; 49 Stat. 28; see also 50 Stat. 5; 52 Stat. 27. The statutes passed early in this period did not require that the applicant be unable to secure credit elsewhere; in addition, they placed either no limit (46 Stat. 78; 46 Stat. 1032; 46 Stat. 1276; 47 Stat. 795), or a high ceiling on the maximum permissible loan (45 Stat. 1306, as amended by 46 Stat. 3). However, in 1933, the Farm Credit Act of that year, 48 Stat. 257, was enacted, establishing agencies for the extension of credit to those farmers who were more or less sound credit risks. Thereafter, a limit was placed on the amount of the loan [10] and it was re-

[10] Although under the Act of February 23, 1934, the loans were normally limited to $250, the Governor of the Farm Credit Administration was authorized to loan larger amounts up to $400 if in his opinion the circumstances so warranted; these limitations were inoperative in the case of loans to farmers in areas which the President certified as distressed emergency areas. Section 2 (b), Appendix, *infra*, pp. 32-33. Such loans would, of course, be a greater credit risk and therefore authorization to make such larger loans in those circumstances merely emphasizes that their basic purpose was to provide relief.

quired that the applicant must not be able to secure credit elsewhere, i. e., from the Production Credit Associations, organized pursuant to the Farm Credit Act. Section 2 (c) of the Act of February 23, 1934 (48 Stat. 354); Section 2 (c) of 49 Stat. 28; Section 2 (a) of 50 Stat. 5; H. Rep. No. 521, 73d Cong., 2d Sess., p. 1; S. Rep. No. 148, 73d Cong., 2d Sess., p. 1. The continuation of loaning facilities, after the creation of the Production Credit Associations, for farmers who were unable to obtain credit through such associations indicates clearly the emergency relief nature of the loans here involved.

During the consideration of the bills which subsequently became the Acts with which we are here particularly concerned, the emergency relief aspect of the loans was continually emphasized. The Senate Committee on Agriculture and Forestry pointed out in its report that a large percentage of farmers would not qualify for loans under the Farm Credit Act, which requires stock, a financial statement, and unpledged property sufficient to justify the loan, and that without these seed loans, millions of farmers and farm laborers will have to seek other employment which would necessarily add to the ranks of the distressed and unemployed, S. Rep. 148, 73d Cong., 2d Sess., p. 1.

In its Report (H. Rep. 521, 73d Cong., 2d Sess.), the House Committee on Agriculture re-

ported the bill favorably. In justifying that recommendation, the Committee said (p. 1):

> Your committee is well aware of the fact that the various production credit associations that are now being organized will serve a great purpose. These associations are to be permanent. It is not intended that crop production loans made directly by the Federal Government to the farmer shall be permanent but this bill is reported favorably by the committee at this time in the belief that it is necessary to taper off, so to speak, with loans of this character for the year 1934, until the production credit associations are well established and the farmers are in a position to avail themselves of the benefits provided by these associations.
>
> Under existing circumstances, these Federal crop loans will reach a class of crop producers who possibly would not be able at this time to procure loans from the production credit associations.

Both the Senate and House of Representatives were apparently in accord with these Committee Reports (78 Cong. Rec. 1825, 1953, 1955, 1956), the general purpose of which was summarized by Representative Kerr, who said (78 Cong. Rec. 1959):

> Let it be remembered that the Government is not seeking to make an investment; this is simply an endeavor to finance the

farmers of this country who are utterly unable to finance themselves."

Such a legislative history indicates that the legislation here involved "was solely an act of grace by the sovereign to meet a temporary emergency which had grasped certain citizens and left them temporarily in dire need of help." *Person* v. *United States*, 112 F. 2d 1, 2 (C. C. A. 8), certiorari denied, 311 U. S. 672. The purpose of the legislation was "to create an agency to make loans to distressed farmers. * * * The government was not seeking by this legislation to enter business and make money. It was simply trying to lend aid and assistance to farmers who had no credit and no money with which to purchase feed for their livestock and seeds for their crops." *United States* v. *Thomas*, 107 F. 2d 765, 766 (C. C. A. 5). Clearly then, the loans here involved were hardly intended as a device for maintaining credit, and the court below, in concluding that the *Guaranty Trust* case was "controlling in this case," was clearly in error (R. 28).

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[11] The House Committee on Appropriations in recommending the passage of H. J. Res. 571, entitled "Making appropriations available for administration of the Sugar Act of 1937 and for crop production and harvesting loans," enacted as 52 Stat. 27, pointed out: "Crop loans are needed to meet the requirement of that class of farmers whose cash needs are small, whose financial condition is such that they are unable to procure credit from any source, and who, but for the extension of credit by the Federal Government through the medium of crop production and harvesting loans, would require some other form of Government relief." H. Rep. No. 1707, 75th Cong., 3d Sess., pp. 3–4.

B. THE *GUARANTY TRUST* CASE IS NOT CONTROLLING

1. Assuming, contrary to the foregoing, that the purpose of the loans was, as found by the court below, to restore the credit of the farmers, we submit, nevertheless, that the *Guaranty Trust* case is not controlling, since under the more recent cases such purpose would appear not so inconsistent with R. S. 3466 as to warrant the implication that Congress had intended to relinquish the priority.

United States v. *Emory*, 314 U. S. 423, involved the applicability of R. S. 3466 to loans made pursuant to the National Housing Act. There, this Court expressly considered and rejected the contention that suppliers of goods and services would refuse to extend credit if in case of insolvency, they would be subordinated to the claims of the United States, and thus that the broad purposes of the National Housing Act would be thwarted if R. S. 3466 were applied, saying:

> In the first place, whatever may be the merits of the contention, it should be addressed to Congress and not to this Court. In the second place, the argument proves too much. If it is sound as applied to this kind of claim of the United States, it is equally sound as applied to all claims as to which the United States asserts priority under § 3466 (314 U. S. at 431).

Although the *Emory* case did not expressly overrule the *Guaranty Trust* case, it did limit

the application of the basic ground of decision in that case, saying: "Only the plainest inconsistency would warrant our finding an implied exception to the operation of so clear a command as that of §3466. We think such inconsistency is wholly wanting here" (314 U. S. at 433). That this represents the considered view of this Court seems clear. In *United States* v. *Waddill Co.*, 323 U. S. 353, the applicability of R. S. 3466 to an F. H. A. loan was not questioned. In *Illinois ex rel. Gordon* v. *United States*, No. 749, October Term 1945, decided April 22, 1946, this Court unanimously reaffirmed the *Emory* doctrine. Accordingly, we submit that the applicability of the *Guaranty Trust* case has been so narrowed as to make it not controlling here.

Furthermore, because of the unique character of the lending statute involved in the *Guaranty Trust* case, we believe that that case is simply an isolated exception carved out of R. S. 3466. This view is supported by the subsequent decisions involving that statute which, although dealing with other situations, have charted a wholly different course. These later decisions, and particularly the *Emory* case, demonstrate that R. S. 3466 is to be applied in its full vigor, and that, before an exception thereto will be implied, the language and the legislative history of the pertinent Act must affirmatively and plainly show that the priority of the United States was intended to

be waived. No such showing can be made here, and the debt here involved is clearly entitled to priority.

2. The administrative interpretation of the Emergency Seed and Crop Loan Acts of February 23, 1934, and June 19, 1934, supports the view that the priority conferred by R. S. 3466 applies to loans made thereunder. The Government has consistently asserted priority under these Acts, both administratively through the Farm Credit Administration and the Department of Agriculture [12] and in litigation conducted by the Department of Justice when unpaid loans have been referred to it for collection. Owing to the large number of claims asserted and collected,[13] it is inconceivable that Congress was unaware of the uniform practice of insisting on priority in respect of the payment of these loans

[12] The form notification of the claim for priority, appearing at pages 1 and 2 of the record, of itself discloses a settled administrative interpretation by the Department of Agriculture and the Farm Credit Administration.

[13] According to the figures supplied by the regional Emergency Crop and Feed Loan Offices, these Offices have, since 1934, filed a total of 12,969 claims for priority in cases where the debtor is deceased. Of these claims, only 229 were initially denied, of which 171 were subsequently paid in full or part. Thus, recovery has been had on 12,911, or over 99% of the total number of claims, the total collections amounting to $3,850,808.48. Of the 58 claims which initially were denied, 28 are still pending and the other 30 have not been pursued because the time for taking an appeal had been allowed to lapse, because the estate was so insolvent as to indicate that no recovery could be had or because the amount involved was too insignificant to warrant the cost of an appeal. It is interesting to note that although the Omaha

where the debtor is deceased."[14] A long-continued practice of this character should prevail even were the soundness of such practice less clear. *Inland Waterways Corp.* v. *Young*, 309 U. S. 517, 524–525; *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 473.

CONCLUSION

It is respectfully submitted that the decision below should be reversed and the case remanded with instructions to allow the priority claimed by the United States.

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JANUARY 1947.

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regional office which serves South Dakota, the state of origin of the present case, has filed 2,212 claims, the present claim was the first in which the asserted priority has been denied; there are now pending in that region five additional cases awaiting the decision of this Court in the present case.

[14] Congressional awareness of the difficulties surrounding the collection of seed and crop loans is evidenced by the Act of December 20, 1944, 58 Stat. 836 (12 U.S.C., Supp. V, 1150), which authorizes the Secretary of Agriculture to compromise, adjust, or cancel these loans under specified conditions. This Act also authorizes the Secretary to cancel the indebtedness where "the debtor is deceased * * * and there is no reasonable prospect of obtaining collection," a situation which is not here present as collection may be effected in full in the instant case.

APPENDIX

1. R. S. 3466, 31 U. S. C. 191, provides as follows:

> *Priority established.*—Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

2. The Act of February 23, 1934, c. 23, 48 Stat. 354, provides as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Governor of the Farm Credit Administration, hereinafter in this Act referred to as the "Governor", is hereby authorized to make loans to farmers during the year 1934 for crop production, planting, fallowing, and cultivation and, to the extent of not exceeding $1,000,000, for feed for livestock in drought- and storm-stricken areas.
>
> SEC. 2 (a) A first lien on all crops growing or to be planted or grown or harvested

during the year 1934, or on livestock, shall be required as security for any such loan: *Provided, however,* That in the case of a loan for the propose of summer fallowing or the production of winter wheat, a first lien, or an agreement to give a first lien, on crops to be harvested in 1935 may, in the discretion of the Governor, be deemed sufficient security. Except as hereinafter provided, such loans shall be made through such agencies, upon such terms and conditions, and subject to such regulations as the Governor shall prescribe. Recording and other fees in connection with such loans shall not exceed $1 in any case, which shall be paid by the Farm Credit Administration. Loans made pursuant to the provisions of this Act shall bear interest at the rate of not to exceed 5½ per centum per annum. For the purpose of collecting loans made under this Act and under prior acts of the same general character, the Governor may use the facilities and services of the Farm Credit Administration or of any officer or officers thereof and may pay for such services and the use of such facilities from the funds made available under section 5 hereof for the payment of necessary administrative expenses; and such institutions are hereby expressly empowered to enter into agreements with the Governor for such purposes.

(b) The amount which may be loaned to any borrower pursuant to this Act shall not exceed $250 unless, in the opinion of the Governor, the circumstances surrounding the loan are such as to warrant a larger amount, in which event the borrower shall be entitled to a loan not in excess of $400; *Provided, however,* That in any area certified by the President of the

United States to the Governor as a distressed emergency area, the Governor may make loans without regard to the foregoing limitations, under such regulations and for such time as he may prescribe therefor.

(c) No loan shall be made under this Act to any applicant who shall not have first established to the satisfaction of the proper officer or employee of the Farm Credit Administration, under such regulations as the Governor may prescribe (1) that such applicant is unable to procure from other sources a loan in an amount reasonably adequate to meet his needs for the purposes for which loans may be made under this Act; and (2) that such applicant is cooperating directly in the crop production control program of the Agricultural Adjustment Administration or is not proposing to increase his 1934 production of basic agricultural commodities in a manner detrimental to the success of such program.

SEC. 3 (a) The moneys authorized to be loaned by the Governor under this Act are declared to be impressed with a trust to accomplish the purposes provided for by this Act, namely, the production, planting, fallowing, cultivation of crops, and feed for farm livestock, which trust shall continue until the moneys loaned pursuant to this Act have been used for the purposes contemplated by this Act, and it shall be unlawful for any person to make any material false representation for the purpose of obtaining any loan or to assist in obtaining such loan or to dispose of or assist in disposing of any crops given as security for any loan made under authority of this Act, except for the account of the Governor, and

for the purpose of carrying out the provisions of this Act.

* * * * *

3. The Act of June 19, 1934, c. 648, 48 Stat. 1021, 1056, provides as follows:

* * * * *

To meet the emergency and necessity for relief in stricken agricultural areas, to remain available until June 30, 1935, $525,000,000, to be allocated by the President to supplement the appropriations heretofore made for emergency purposes and in addition thereto for (1) making loans to farmers for, and/or (2) the purchase, sale, gift, or other disposition of, seed, feed, freight, summer fallowing and similar purposes; expenditures hereunder and the manner in which they shall be incurred, allowed, and paid, shall be determined by the President, and may include expenditures for personal services and rent in the District of Columbia and elsewhere and for printing and binding and may be made without regard to the provisions of section 3709 of the Revised Statutes.

* * * * *

4. Section 35.1422, South Dakota Code (1939) provides as follows:

Order of Payment of Claims. All demands against the estate of any deceased person must be paid in the following order:

(1) The expenses of administration;

(2) Funeral expenses, including reasonable cost of burial lot, and not to exceed fifty dollars for marker on grave;

(3) The expenses of last sickness;

(4) Any debt that may be due by decedent personally to servants and employees for services rendered within the sixty days next preceding his death;

(5) Debts having preference by the laws of the United States;

(6) All other demands against the estate, except that where a lien for any demand exists by mortgage, pledge, attachments, judgments, or execution levy, such lien shall have preference according to its priority to the extent of such demand, on any specific property on which such lien shall have attached.

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